

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Revisions to Broadcast Auxiliary Service)	ET Docket No. 01-75
Rules in Part 74 and Conforming Technical)	
Rules for Broadcast Auxiliary Service, Cable)	
Television Relay Service and Fixed Services)	
In Parts 74, 78 and 101 of the Commission's)	
Rules)	

To: The Commission

APPLICATION FOR REVIEW

The Society of Broadcast Engineers, Incorporated (SBE), by counsel and pursuant to 47 C.F.R. §1. 115(a), hereby respectfully requests that the Commission review and reverse the *Order* of the Chief, Office of Engineering and Technology, DA 03-3215, released October 16, 2003, which denied a requested extension of a temporary stay of the effective date of new, formal frequency coordination requirements [hereinafter referred to as the Prior Coordination Notice (PCN) frequency coordination requirements] for most fixed, point-to-point Broadcast Auxiliary Service (BAS) stations. The new PCN frequency coordination rules were adopted in the *Report and Order*, FCC 02-298, 17 FCC Rcd. 22979, released November 13, 2002. The initial stay, by *Order*, DA 03-1141, by the Chief, Office of Engineering and Technology (OET) released April 15, 2003, was scheduled to expire and did expire, and the new PCN rules went into effect on October 16, 2003. As will be shown, absent action by the Commission to immediately review¹ and reverse the OET's October 16, 2003 *Order* and reinstate the stay of the effective

¹ Because the Office of Engineering and Technology allowed the Stay to expire prior to adjudicating the Request for Extension thereof, it is respectfully requested that the Commission expedite its review and treat

date of these new rules for an additional period of six months (or some other reasonable time), application of the new PCN coordination rules will lead inescapably to a substantial number of instances of interference to fixed broadcast auxiliary facilities and disrupt both aural and video broadcasts, especially in larger, crowded markets. The reinstatement and extension of the previous stay is necessary to permit improvement of the deficient and corrupted ULS database for BAS fixed facilities, due to legacy problems. As good cause for this Application for Review, SBE states as follows.

1. The PCN requirement for 950 MHz fixed, point-to-point Aural BAS links, and for 2.5, 7 and 13 GHz fixed, point-to-point TV BAS links was applied to Part 74 facilities essentially because it has worked reasonably well for Part 101 point to point Operational Fixed (OFS) and Common Carrier (CC) facilities in other microwave bands, and because some of those BAS bands were shared with OFS and CC facilities. Until now, both fixed and mobile BAS had been licensed on a shared basis, premised on local, informal coordination procedures established in the private sector. The frequency coordination program was and is sponsored and organized principally by SBE. The local volunteer coordinators maintained databases of fixed and mobile facilities in their markets, and provided flexible, real-time coordination for local and visiting BAS spectrum users premised on the coordinators' own database administration. Efficient use of scarce, overcrowded spectrum was facilitated by these coordination efforts.

2. In the November 13, 2002 *Report and Order*, the Commission applied the Part 101 coordination procedures to Aural and Video fixed BAS. This will require formal coordination procedures which include application of inflexible (and unclear)

this Application for Review as an emergency filing. Absent such, the harm from the implementation of the new rules sought to be stayed for an additional period will be realized.

interference criteria, and written notices to other licensees in the subject bands which might be affected by a new or modified fixed facility.

3. The problem with this is that the more formalized means of frequency coordination established in the *Report and Order* in this proceeding is, due to the seriously corrupted Part 74 ULS database, which would be used by the coordinators for the PCN requirement, unusable in its current form. Implicit in the new PCN approach for BAS frequency coordination is the assumption that the database is accurate. Frequency coordination under the PCN rules adopted in this proceeding cannot be successfully implemented because of legacy database inaccuracies in the ULS.

4. The most urgent of these flaws is the absence of receive site information (receive site coordinates and path azimuth), which was not required to be submitted with the old FCC Form 313 applications, used for many years. Though that information is now called for by the Form 601, the database remains incomplete with respect to many hundreds of receive sites. Absent this data, formal coordination procedures cannot ascertain the sites that would be the victim of interference.

5. Other problems include errors in site coordinates, and the absence of receive antenna height, make and model. SBE's initial request for temporary stay noted that its review of the ULS database showed that 29% of all fixed, point-to-point BAS license records contain substantial errors. This analysis was based on a study conducted by the consulting engineering firm of Cavell, Mertz and Davis, which revealed that 6,163 stations out of 21,033 fixed stations are either lacking receiver end geographic coordinates or have corrupted receive coordinates.² In short, the ULS is not now ready to

² Updated review of the ULS database reveals that, of 2,069 fixed links at 2 GHz, 1416 now show no receive site coordinates. At 7 GHz, of 4,601 licenses, 2,416 show no receive site coordinates. At 13 GHz,

support a mandatory PCN requirement for aural fixed links at 950 MHz or TV fixed BAS links at 2.5, 7 or 13 GHz.

6. The Commission, in granting a six-month stay of the new PCN rules, acknowledged that the database errors “could seriously affect the efficacy of prior coordination procedures, which was not anticipated when the Order setting these procedures were adopted.” *Order*, DA-03-1141, released April 15, 2003, at 2. However, the Commission only granted a six-month temporary stay of the PCN rules, whereas SBE had requested a year’s stay.³ In fact, the corrupted database has already proven to be a major obstacle in application filing for BAS fixed facilities. See, *South Williamsport Sabrecom, Inc.*, Order on Reconsideration, DA 03-2842, released September 10, 2003 (database information missing from ULS led to erroneous dismissal of modification application for aural STL station).

7. Immediately following the issuance of the stay *Order* on April 15, 2003, SBE met with OET, WTB and Media Bureau staff to plan for the correction and updating of the database. SBE envisioned working with State broadcasting associations and their members to encourage each licensee to provide missing data. The Wireless Bureau staff agreed to investigate methods to accommodate corrective and additive information that would improve the integrity of the database, which corrections were critical to the new

of 1,591 licenses, 754 show no receive site coordinates. The engineer for a major radio broadcasting company reports that for all stations owned by that company, information was provided at the time of the grant of the stay regarding aural BAS receive sites, but that information never was incorporated in the ULS database, which remains incorrect with respect to that station’s fixed STL facilities to date.

³ The Commission claimed that this was a “proper balance” between a valid database and the “benefits” of the new, formal coordination procedures. The view of the Joint Parties is that a valid database is a precondition for any benefit in the PCN procedures, so there is nothing to “balance”. The question is, what is necessary in order to fix the broken ULS database.

formal coordination requirements.⁴ SBE, after discussing the matter with OET, Media Bureau and WTB staff, filed with the Office of the Managing Director on June 2, 2003 an Emergency Request for Waiver of Filing Fees for Certain Broadcast Auxiliary Modification applications Submitted on FCC Form 601. The request was to allow the filing of modification applications for BAS which provided only missing information about existing facilities, rather than modification of information already in the database, without a filing fee. The theory was that this would encourage licensees to provide missing data, which they otherwise were not required to do. SBE informed broadcasters of the pendency of this request. Unfortunately, the Office of Managing Director took no action on the Emergency Request until September 3, 2003 when the request was denied outright. SBE and other parties have since then taken more aggressive steps to urge broadcasters and broadcast engineers to update and correct the ULS database for BAS facilities.

8. Under the circumstances, the six-month temporary stay proved insufficient to correct the ULS sufficiently to accommodate the new rules. SBE had requested a stay of one year to correct the ULS database, all of which was necessary in order to allow a

⁴ The second reason for the Stay was the lack of industry consensus on what interference criteria should be used for prior coordination notice (PCN) frequency coordination studies involving Part 74 BAS links, especially 950 MHz Aural BAS links. The TSB-10F standard offered in Section 101.105(c) of the FCC Rules is almost a 10-year old standard and does not address current BAS applications such as hybrid analog-digital TV STLs, and is entirely silent on 950 MHz Aural BAS applications. Interference criteria for digital-into-analog and analog-into-digital desired-to-undesired (D/U) signal ratios for modern day, current practices BAS applications, especially those involving adjacent-channel situations, needs to be developed and added to an updated TSB-10G. Otherwise, the default interference criteria of Section 101.105(c)(2), which are a D/U ratio of 90 dB or better for co-channel, and a D/U ratio of 56 dB or better for adjacent-channel, would have to be used for PCN studies. In SBE's view, it is doubtful that any new or modified BAS links could be frequency coordinated in the large metropolitan areas if such stringent criteria would have to be applied. SBE is attempting to work with other parties to establish more reasonable and mutually acceptable interference criteria than the ultra conservative values given in Section 101.105(c)(2), but, like the Commission's delays in repairing missing or erroneous BAS records in the ULS, needs additional time to complete this work.

reasonable initiation of the new PCN rules. On October 1, 2003, SBE requested a six month extension of the temporary stay, which would be a final opportunity to bring the ULS database up to date and to supply missing information sufficient to allow the new PCN requirements a reasonable chance to work. This Request for Extension of Temporary Stay was opposed by the National Spectrum Managers' Association, claiming that the best way to fix the database was to commence the PCN process, and allow responses to the notices to be the catalyst to correct the database. Supposing that the commercial coordinators might just send PCN notices to every broadcaster in a market, this would place a massive and completely unfair burden on broadcasters to review and analyze each and every PCN mailing to see for themselves whether an application for a new or changed BAS fixed facility will have an effect on the incumbent facility. That process would be exactly backwards, and does not exist now under the informal coordination procedures used by the Part 74 volunteer coordinators operating under the auspices of the SBE. The commercial coordinators must, under the PCN process, coordinate a new or changed facility first, before sending PCN notices to co-channel or adjacent channel licensees. If they do so on the basis of the database in its present form, either incumbents will not get notices, or all broadcasters will have to do their own engineering analyses to determine which applications will affect them and which will not. This cannot work. The commercial coordinators must bear the burden of doing their homework first, and not rely on protests (from licensees who may or may not get appropriate PCN notices) to support their supposed coordination, based on a seriously flawed database, in order to set things right. Unless the ULS database is corrected, the PCN coordinator will be providing no service or value at all. The present, local

coordination procedures have worked fine to date, and can continue to do so while the stay is in place, so there is no urgency at all in implementing the new rules. The volunteer Part 74 coordinators' familiarity with their local markets, maintenance of their own databases, and the lack of reliance on the flawed ULS database allow the informal system to work in the meantime.

9. Nevertheless, and notwithstanding extensive support for the extension of the temporary stay filed by numerous broadcast entities,⁵ the Chief, OET, denied the extension by his October 16, 2003 *Order*. This Order was adopted and released on the day that the temporary stay expired and the new rules became effective. In that *Order*, the Chief, OET stated that there was no indication that additional time would result in improvement in the database; that there had been almost a “full year”, from November 13, 2002 until the Stay ended, to correct the database; that licensees did not need to wait to correct the database pending SBE's fee waiver; and that there was a modest increase in applications filed during the “generous” six-week window between the September 3, 2003 denial of the SBE fee waiver request and the October 16, 2003 expiration of the Stay. OET agreed with NSMA that the new procedures can work even with the flawed database, because licensees are obligated to cooperate and respond whenever a PCN notification contains any omissions or errors regarding their facilities. Finally, OET claimed that there are “efficiencies” and “protection benefits” of the new rules. The foregoing conclusions are each incorrect and must be reversed.

10. First of all, there is every reason to believe that reinstatement of the Stay on the effective date of the new rules would be highly efficient in correcting the database. It

⁵ Supporting comments were filed by the National Association of Broadcasters, the Association for Maximum Service Television, Cohen, Dippell & Everist, P.C., Viacom, Sarkes Tarzian, and others.

is only in the past few weeks that the ramifications of the new PCN rules were understood by those affected by them. If the Commission issues a public notice (which was discussed last April with the Commission's staff when SBE representatives met with them) encouraging the filing of modifications in order to add missing database information, the records would be substantially improved. The broadcast industry has now been alerted to the need to contribute to the correction of the database, and will respond in the face of a final extension enabling such.

11. Second, it is unfair to assert that there has been a "full year" to address this matter, since Federal Register publication of the *Report and Order* in this proceeding did not even occur until March 17, 2003, some 4 months after the November 13, 2002 release date of the *Report and Order*. Because no one can be deemed to be on notice of the Commission's action until it is published in the Federal Register, notice of the PCN procedures was not given until March 17, 2003. If the Commission finds a year's time to be sufficient, then it should at least extend the temporary stay for an additional 4 months.

12. Third, while it was true that licensees did not "need to wait" until the Office of the Managing Director acted on the fee waiver request filed by SBE in order to encourage the filing of modification applications to provide missing data, it was certainly not unreasonable of them to do so, nor was it at all reasonable for the Managing Director to take over three months to issue a simple denial of the waiver. And the period between the denial of the fee waiver and the expiration date of the Stay cannot by any reasonable standard be deemed "generous". The simple fact is that BAS matters typically are ancillary, and somewhat esoteric issues to broadcast licensees. In this case, what is at stake is the success or failure of a new procedure for coordination of new and modified

fixed BAS microwave links. If it fails, there will be interference to incumbents, and to newcomers who innocently use the services of commercial frequency coordinators who must rely on the ULS database. It is substantially flawed. The *Order* claims that incumbents must respond to coordination notices, but they cannot do so if they don't receive notices. They won't receive notices if their receive sites are not in the database, or if the database is so corrupted that the incumbent facility is not determined to require PNC notice. Furthermore, the standards for interference calculation are not agreed upon, and additional time to arrive at an industry consensus is necessary.

13. The Commission cannot reasonably conclude that, under the present circumstances, there is any benefit or efficiency to be gained from the imposition of the new PCN procedures. The procedures are clearly, and admittedly not "ready for prime time". The Commission has established the new rules, which will eventually be implemented. None of the Joint Parties has appealed the adoption of those PCN procedures for Part 74 fixed BAS facilities. All that is asked is that the present process (which has worked well for many years) be retained for one single additional period of approximately six months, so that the private sector efforts to correct the database can be allowed a chance to succeed. To implement the PCN procedures now would render the commercial coordination efforts meaningless. It would result in interference being created to existing facilities from coordinated new facilities. Such is not fair to either incumbent licensees or applicants for new or modified fixed or mobile facilities, who cannot know, after a new or modified facility is licensed, whether or not interference will be caused to incumbent facilities, or received by their own newly licensed facilities. The entire premise of the new rules is to make Part 74 frequency coordination more efficient

and predictable. To implement the new rules now will create exactly the opposite effect.
The process will be chaotic and unpredictable.

Therefore, the foregoing considered, SBE respectfully requests that the Commission review and reverse the *Order*, DA 03-3215, issued under delegated authority, and that the temporary stay established in the April 15, 2003 *Order* be reinstated and extended for a final, six month period.

Respectfully submitted,

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